No. 05-1609

Supreme Court, U.S.
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In The
Supreme Court of the United States

AURELIO ROSADO, LYDIA ROSADO,
AND THEIR CONJUGAL PARTNERSHIP,

Petitioners,

v.

WACKENHUT INTERNATIONAL, INC.
WACKENHUT PUERTO RICO, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly held that petitioners failed to prove their discrimination claims for they: (1) established a *prima facie* age discrimination claim under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, but failed to prove pretext in rebutting the employer's legitimate non-discriminatory reasons; and, (2) failed to establish a *prima facie* claim under the American with Disabilities Act, 42 U.S.C. §§ 12101-12223.

2. Whether the Court of Appeals correctly affirmed the district court's grant of summary judgment for respondent on petitioners' claim that age and disability discrimination were the reasons for his termination at Wackenhut Puerto Rico.

PARTIES TO THE PROCEEDING

Petitioners: Aurelio Rosado, Lydia Rosado, and their Conjugal Partnership

Respondents: Wackenhut International, Inc. and Wackenhut Puerto Rico, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, respondents make the following disclosures:

1) Wackenhut Puerto Rico, Inc., informs that it is a wholly owned subsidiary of Wackenhut International, Incorporated.

2) Wackenhut International, Incorporated is a wholly owned subsidiary of the Wackenhut Corporation, a corporation registered in the United States.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to the Proceeding	ii
Corporate Disclosure Statement	iii
Table of Contents	iv
Table of Authorities	v
Jurisdiction	1
Statement of the Case	1
Summary of the Arguments	6
The Argument: Reasons For Denying the Writ	7
I. The Court of Appeals correctly affirmed the district court's determination that rosado failed to raise a genuine issue of fact regarding pretext under the ADEA	7
a. The first circuit is clear on pretext	7
b. Petitioners' version of the catalyst to rosado's dismissal does not establish pretext	9
II. The Court of Appeals correctly determined that rosado did not fulfill its burden of presenting a *prima facie* case of disability discrimination under the ADA	16
Conclusion	17

TABLE OF AUTHORITIES

Page

CASES

Benham v. *Lenox Savings Bank*, 18 F. Supp. 2d 132 (D. Mass. 2000) 14

Boyd v. *Ford Motor Co.*, 948 F.2d 283 (6th Cir. 1991) 17

Cavallo v. *Star Enter.*, 100 F.3d 1150 (4th Cir. 1996) 17

Conto v. *Concord Hosp., Inc.*, 265 F.3d 79 (5th Cir. 2001) 9

Doe v. *District of Columbia*, 93 F.3d 861 (D.C. Cir. 1996) 17

Dominguez-Cruz v. *Suttle Caribe, Inc.*, 202 F.3d 424 (1st Cir. 2000) 8, 10

Feliciano v. *El Conquistador*, 218 F.3d 1 (1st Cir. 2000) 7

Gillen v. *Fallon Ambulance Serv.*, 283 F.3d 11 (1st Cir. 2002) 8

Holifield v. *Reno*, 115 F.3d 1555 (11th Cir. 1997) 14

Lauren v. *Providence Hosp.*, 150 F.3d 52 (1st Cir. 1998) 12

Leer v. *Murphy*, 844 F.2d 628 (9th Cir. 1988) 17

Lehmen v. *Prudential Ins. Co. of Am.*, 74 F.3d 323 (1st Cir. 1996) 12

Macone v. *Town of Wakefield*, 277 F.3d 1 (1st Cir. 2002) 9

Marcano-Rivera v. *Pueblo Int'l, Inc.*, 232 F.3d 245 (1st Cir. 2000) 8

TABLE OF AUTHORITIES – Continued

Page

Medina-Muñoz v. *R.J. Reynolds Tobacco Co.*, 896 F.2d 5 (1st Cir. 1990) 10

Mesnick v. *Gen. Elec. Co.*, 950 F.2d 816 (1st Cir. 1991) 10

Ost v. *West Suburban Travelers Limousine, Inc.*, 99 F.3d 435 (7th Cir. 1996) 14

Reeves v. *Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000) 7, 8, 15

Rivera Gómez v. *de Castro*, 843 F.2d 631 (1st Cir. 1988) 16

Rosado v. *Radio Shack, Inc.*, 312 F.3d 532 (1st Cir. 2002) 7

Santiago v. *Canon U.S.A., Inc.*, 138 F.3d 1 (1st Cir. 1998) 12

Shakur v. *Selsky*, 391 F.3d 106 (2nd Cir. 2004) 17

Shorett v. *Rite Aid of Maine, Inc.*, 155 F.3d 8 (1st Cir. 1998) 14

Thomas v. *Eastman Kodak Co.*, 183 F.3d 38 (1st Cir. 1999) 7

United States v. *García*, 242 F.3d 593 (5th Cir. 2001) 17

Wildlife Exp. Corp. v. *Carol Wright Sales, Inc.*, 18 F.3d 502 (7th Cir. 1994) 17

Wilken v. *United States*, 289 F.3d 684 (11th Cir. 2002) 17

Zapata-Matos v. *Reckitt & Colman, Inc.*, 277 F.3d 40 (1st Cir. 2002) 7

TABLE OF AUTHORITIES – Continued

Page

FEDERAL STATUTES

28 U.S.C. § 1254(1) 1

Americans with Disabilities Act
42 U.S.C. §§ 12101-12223 i

ADEA
29 U.S.C. §§ 621-634 i

RESPONDENTS' BRIEF IN OPPOSITION

Pursuant to United States Supreme Court Rule 15, the respondents, Wackenhut International, Inc. and Wackenhut Puerto Rico, Inc., hereby submit this Brief in Opposition to the petition for a writ of certiorari.

OPINIONS BELOW

The opinion of the Court of Appeals is not reported and was reprinted in the Appendix to the Petition ("Pet. App.") at 1-11. The opinion of the District Court is reported at 98 F.Supp. 2d 281, Pet. App. 12-32.

JURISDICTION

The judgment of the Court of Appeals was entered on December 29, 2005. The petition for writ of certiorari was filed on May 6, 2006, and placed on the docket June 16, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioners'[1] statement of the case is neither complete nor accurate. Respondents offer this brief counterstatement to address their more salient omissions and errors.

[1] Petitioners, Aurelio Rosado, Lydia Rosado, and the conjugal partnership formed between them, will be identified in this opposition brief as Petitioners or Rosado.

Rosado worked as Wackenhut Puerto Rico, Inc.'s ("WPR") General Manager from January 31, 1989 to July 12, 2004. WPR, a subsidiary of WII, is dedicated to providing security and surveillance services to the private and public sector in Puerto Rico. As General Manager, Rosado possessed broad discretion and direct responsibility of running WPR. Rosado also had to submit monthly operations reports, balance sheets, and profit and loss statements to Mr. Fernando Hegel, Vice-President of WPR's operations and Mr. William Jefferson Morrow, President of WPR's Board of Director. Pet. App. 3, 13. Rosado received periodic evaluations and yearly performance bonuses during his tenure at WPR based on his performance directing WPR. Pet. App. 3, 13.

Between 1999-2001, WPR lost a substantial number of government contracts and its revenues dropped in half. *Id.* Petitioners allege that the substantial losses were tied to government contracting and Rosado, as General Manager, could not remedy the problems. Pet. 5-6. Respondents contend that Rosado was the captain of his ship and was required to remedy WPR's operational deterioration, by making adjustments, such as reducing costs; collecting accounts receivables; and, selling more man-hours. Pet. App. 4, 14.

Despite WPR's operational woes, Rosado did not implement or devise any strategy to tackle WPR's economic debacle. Opp. App. 7-9. In fact, in two years, WPR's revenues had decreased from $33 to $16 million. *Id.*

Consequently, concerned with WPR, Morrow and Hegel directed John Griffey, a Special Project Manager in Field Support Operations for Wackenhut International, Inc. ("WII"), who provided managerial and operational support to

WII subsidiaries, to review and assess WPR and provide a sensitivity report of its operations. Griffey's sensitivity report stressed the need for improved collections, operational efficiency, and increased sales. Pet. App. 14.

Unlike petitioners statement (Pet. App. 9, 15), Rosado was provided copy of the sensitivity report as a tool to help redirect WPR. Opp. App. 13-30. However, Rosado simply chose not to address any of the critical points identified therein. WPR's swan song remained the same.

Since WPR's operations had not improved, in January or February 2002, Morrow and Hegel met with Rosado to reassess and discuss WPR's bleak state of affairs. Morrow expressed his dissatisfaction with WPR's performance and need for radical change. Pet. App. 4, 14. Morrow instructed Rosado to submit a comprehensive action plan to identify objectives to improve sales, reduce overhead, collect accounts receivable, and direct the company towards profitability. *Id.*

Several days after the meeting, Rosado suffered a cardiac arrest. Rosado was in recovery for fifty-five (55) days. During his absence, Morrow and Hegel sent Griffey, who had already examined WPR in 2001, to Puerto Rico to assist WPR's operations and provide leadership to the crumbling WPR operations. Pet. App. 4, 14. On his own accord, Griffey prepared a situation report to examine and address each facet of WPR and provide suggestions for each. The situation report detailed the problems WPR encountered and made suggestions to remedy each, such as: client contract management; collections; an operational reorganization of WPR; bid development; and, inventory control. Opp. App. 8.

Petitioners' proposed proof of pretext, the sensitivity report, makes much ado about nothing. First, Rosado was

on leave in March 2002, when Griffey submitted this report to the WPR officers, Morrow and Hegel. Second, Griffey's situation report, at page 2, identified the General Manager position as the first point in the recommendations regarding organization and structure. Suffice to note that no changes to the General Manager position (i.e., Aurelio Rosado) were recommended in this report. Opp. App. 15. Despite petitioners' theory of pretext (*see*, Pet. 17-25), no secrets or lies lay in Griffey's situation report.

In April 2002, Rosado returned to work. Contrary to petitioners' statement of fact (Pet. 7-8), Hegel requested Rosado's input (once he returned to work) as to Griffey's situation report and requested Rosado submit his own action plan. Contrary to petitioners' speculative theory that the action plan and the situation report are one in the same, Griffey's situation report was not a WPR General Manager's action plan. Instead of providing any comments, critiques or proactive recommendations to the situation report, Rosado simply chose to adopt it and not submit the required action plan. Pet. App. 9.

In sum, WPR had lost more than 75% of the business and Rosado had not implemented any directive, strategy, or plan to improve WPR's perilous situation. Rosado simply was not rendering the expected results or proposing viable alternatives. Morrow, as President of WPR, decided to terminate Rosado in July 2002. Pet. App. 8-9. Contrary to petitioners' statement that Hegel and Griffey both informed Rosado of his termination, the record speaks for itself. It was Hegel, as Rosado's direct supervisor, who met with Rosado and informed him of the company's decision. Opp. App. 9-11.

Hegel and Morrow appointed Griffey as General Manager because he had knowledge of WPR's operations and had demonstrated the initiative, interest and ability to lead WPR out of its operational chaos. Griffey had provided detailed reports on WPR and had presented detailed plans to restructure the operations towards profitability. Opp. App. 10.

Petitioners filed a complaint before the United States District Court for the District of Puerto Rico alleging that Rosado's termination was discriminatory, in violation of the ADA and their local law counterparts. Pet. App. 2, 12. The District Court entered an Opinion and Order dismissing petitioners' federal claims with prejudice and their claims under Puerto Rico law without prejudice. Pet. App. 12-32. Petitioners appealed the decision before the First Circuit alleging the District Court erred in dismissing their claims. Pet. App. 1-11.

Both the First Circuit and the District Court correctly found that Rosado did not prove his *prima facie* claim of disability discrimination. Further, the First Circuit, and the District Court, found that, although Rosado satisfied the burden of proving his *prima facie* claim under the Age Discrimination in Employment Act, *supra*, WPR had presented legitimate, non-discriminatory reasons for terminating Rosado. Pet. App. 8-9, 26-27. Further, the First Circuit found that petitioners did not provide any evidence of pretext. Pet. App. 8-9.

Now, petitioners impart their unsupported and unsupportable theory of pretext before this Honorable Supreme Court. Respondents respectfully request this petition be denied. Reasons for denying the petitions writ of *certiorari* writ petition follow.

SUMMARY OF THE ARGUMENTS

Petitioners' contend that, in considering the termination of Mr. Rosado's employment at WPR, the Court of Appeals misapplied the standards for determining whether a plaintiff has proven pretext under the ADEA. The Court of Appeals, however, correctly applied the standards stipulated by this Court for solving this issue, thus its application to the facts of this case raises no issue warranting review.

Petitioners also raise a pretext argument under the ADA. However, this argument should not be considered since the Court of Appeals correctly affirmed the District Court's determination that petitioners did not even meet their burden of proving a *prima facie* case under the ADA. In addition, petitioners waived any ADA claim since it has not been brought as an error before this Court.

THE ARGUMENT: REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE DISTRICT COURT'S DETERMINATION THAT ROSADO FAILED TO RAISE A GENUINE ISSUE OF FACT REGARDING PRETEXT UNDER THE ADEA.

A. THE FIRST CIRCUIT IS CLEAR ON PRETEXT.

Since *Feliciano* v. *El Conquistador*, 218 F.3d 1 (1st Cir. 2000), only a month after the *Reeves* precedent,[2] the First Circuit noted: "[a]lthough our prior use of the label, "pretext plus," may have resulted in a misunderstanding about the proof required to state a discrimination claim in the circuit, we have been careful to explain that the phrase did not mean that the plaintiff always must present evidence beyond the proof of pretext in order to establish discrimination."[3] Thus, the First Circuit's scope of the proof of pretext analysis has been tailored to fit the *Reeves* definition. *Zapata-Matos* v. *Reckitt & Colman, Inc.*, 277 F.3d 40, 45 (1st Cir. 2002) ("disbelief of the reason may, along with the *prima facie* case, on appropriate facts, permit the trier of fact to conclude the employer had discriminated."); *Rosado* v. *Radio Shack, Inc.*, 312 F.3d 532 (1st Cir. 2002) (The district court correctly concluded that

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[2] *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

[3] *See, Thomas* v. *Eastman Kodak Co.*, 183 F.3d 38, 57 (1st Cir. 1999), cert. denied, 145 L. Ed. 2d 1082, 120 S. Ct. 1174 (2000) ("Although it uses the label 'plus,' the First Circuit's 'pretext plus' standard does not necessarily require the introduction of additional evidence beyond the required to show pretext.") (internal quotation marks omitted).

plaintiff's evidence was insufficient to create a material issue of fact and entered summary judgment – citing Reeves); *Gillen* v. *Fallon Ambulance Serv.*, 283 F.3d 11 (1st Cir. 2002) ("the trier of fact then focuses on the main event: deciding whether the evidence adduced is sufficient to sustain a finding of discriminatory intent on the part of the defendant."); *Domínguez-Cruz* v. *Suttle Caribe, Inc.*, 202 F.3d 424, (1st Cir. 2000) ("At the summary judgment phase ... the focus should be on the ultimate issue: whether, viewing the aggregate package of proof offered by the plaintiff and taking all inferences in the plaintiff's favor, the plaintiff has raised a genuine issue of fact as to whether the termination of the plaintiff's employment was motivated by age discrimination."); *Marcano-Rivera* v. *Pueblo Int'l, Inc.*, 232 F.3d 245 (1st Cir. 2000) ("although the presumption of discrimination 'drops out of the picture' once the defendant meets its burden of production, the trier of fact may still consider the evidence establishing plaintiff's prima facie case 'and inferences properly drawn therefrom ... on the issue of whether the defendant's explanation is pretextual – citing Reeves.' ")

The cases highlighted above disprove petitioners' version of a First Circuit placing a *de facto* pretext-plus treatment to the *Reeves* standard. Contrary to petitioners' wishes, these decisions harmonize and are consistent with *Reeves*. By the same token, the First Circuit's analysis of pretext to the case at hand is consistent with *Reeves*. Petitioners preach pretext[4] with unsupported-by-the-record

[4] The First Circuit correctly concluded that petitioners did not present any evidence in their appellate brief to counter the respondents' legitimate, non-discriminatory reasons. In fact, petitioners' lengthy narrative before the First Circuit does not point out any record support. Petitioners did not present a scintilla of concrete evidence, a single

(Continued on following page)

theories, conclusory allegations, and conjecture insufficient to counter respondents' legitimate, non-discriminatory reasons for termination. (*See*, petitioners' brief, pgs. 7-11). Even assuming as true all the permutations of pretext petitioners present, as the First Circuit did, the issues proffered as evidence of pretext plainly are insufficient to counter WPR's reasons for termination.

Further, petitioners contend that the Court of Appeals' decision conflicts with the holdings of other circuit courts. Pet. 2-3, 12-25. But because, as explained before, the circuit court of appeals and the district court did not apply any law to petitioners' claim other than the well-established *Reeves* framework, no circuit split requiring resolution has been created.

B. PETITIONERS' VERSION OF THE CATALYST TO ROSADO'S DISMISSAL DOES NOT ESTABLISH PRETEXT.

Petitioners merely rehash the events that led to Rosado's dismissal, as Rosado perceived them, without indicating and referencing any adequate evidence to prove pretext. Petitioners cannot structure their pretext argument by presenting subjective perception, conclusions, improbable inferences, unsupported speculation and conjecture. *Macone* v. *Town of Wakefield*, 277 F.3d 1, 5 (1st

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reference to the appendix, the record, the exhibits or motions contained therein. Pet. 17-40. As this Court stated in *Conto* v. *Concord Hosp., Inc.*, 265 F.3d 79 (5th Cir. 2001). "As the Federal Rules of Appellate Procedure are sufficiently central to our judicial management responsibilities to warrant substantial compliance, rather than discretionary disregard at the convenience of counsel, Conto's fact-dependent hostile work environment claim must be deemed waived."

Cir. 2002); *Medina-Muñoz* v. *R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990).

However, even taking their perception and conclusions as true, petitioners' submit as proof of pretext that: (a) Rosado was not consulted regarding the 2001 sensitivity report, (b) one (1) comment from the President of Wackenhut El Salvador ("WES"), Miguel Angel Escobar, to Rosado that he should consider retirement (not a decision-maker); (c) Griffey's presence in Puerto Rico while he prepared the sensitivity report and, upon Rosado's leave, in 2002; and, (d) Rosado was given *only* three (3) months to prepare the action plan (petitioners' brief, pgs. 12-16).

As the Court of Appeals correctly concluded, petitioners' evidence (in its most favorable light) is insufficient to prove, by a preponderance of the evidence, that the legitimate reasons respondents offered were not the true reasons for Rosado's termination, but a pretext for discrimination. Pet. App. 8-9, 26-27. Simply, petitioners failed to present facts from the record to support their assertions of discrimination. Unfounded theories and wishful speculation are insufficient to prove pretext, and surely not enough to warrant this Court's review of bedrock principles guided by *Reeves*. Therefore, petitioners' contention is, without a doubt, meritless.

Let us examine the Court of Appeals' decision.

The Court of Appeals took into account the circumstantial evidence petitioners' introduced to support their claim of discrimination and held that petitioners "satisfied the prima facie case factors." Pet. App. 7. The Court then determined that WPR met its burden of production by presenting evidence that "Mr. Rosado was discharged because his managerial performance since 1998 was

unsatisfactory and because WPR was suffering lack of effective leadership." *Id.* The court went on to note, correctly [citing its previous decisions in *Domínguez-Cruz* v. *Suttle Caribe, Inc.*, 202 F.3d 424, 430 (1st Cir. 2000) and *Mesnick* v. *Gen. Elec. Co.*, 950 F.2d 816, 823 (1st Cir. 1991), that Mr. Rosado had to show that WPR's "alleged justification was not its true reason for the adverse employment action, but was a mere pretext for age discrimination." Pet. App. 7. In that regard, it clearly stated that "Mr. Rosado must produce evidence beyond the mere assertion that the alleged justification is implausible and show that the employer's discriminatory animus actually motivated the adverse employment action." Pet. App. 7-8. **The Court then found petitioners' evidence insufficient to prove pretext.** Pet. App. 8-9.

The evidence petitioners produced to establish pretext was the following:

(a) *The 2001 sensitivity report*: In this regard, the Court of Appeals correctly determined that the fact that Rosado purports he was kept out of the loop on the sensitivity report does not in any way suggest that respondents' performance-based reasons for terminating Rosado were false. Pet. App. 8-9.

(b) *The Retirement Comments*: The Court of Appeals and the District Court correctly determined that a comment from a non-decision maker from another WII subsidiary during a telephone conversation with Rosado is insufficient evidence of pretext. Pet. App. 5, 8-9, 15, 26-27. This isolated remark, from someone unconcerned with the decision-making process of WPR was deficient to counter WPR's reasons for dismissing Rosado. *Id.* Further, the statement did not prove illegal discrimination, as the

statement and the person who made it were far removed from the actual employment action. *See, Lauren v. Providence Hosp.*, 150 F.3d 52, 58 (1st Cir. 1998). Remarks by non-decision makers generally are not probative of an employer's intent. *Santiago v. Canon U.S.A., Inc.*, 138 F.3d 1, 6 n.8 (1st Cir. 1998) (noting that "stray remarks in the workplace . . . , statements by non-decision makers, or statements by decision makers unrelated to the decisional process itself" normally are insufficient to establish discriminatory animus); *Lehmen v. Prudential Ins. Co. of Am.*, 74 F.3d 323, 329 (1st Cir. 1996) ("Isolated, ambiguous remarks are insufficient, by themselves, to prove discriminatory intent.").

(c) *Griffey's presence in WPR*: The mere fact that Griffey came to prepare a sensitivity report in 2001 is insufficient to prove any pretext. Pet. App. 8-9, 27. After all, Griffey's position as Special Project Manager for WII Field Support Operations, was precisely that of offering support and assistance to general managers of WII affiliates and subsidiaries. His visit to Puerto Rico stemmed from WPR's legitimate concern that revenues had dropped from $33 million to $16 million. Griffey prepared the sensitivity report with recommendations on manners to redirect the operation. Unlike the scheme petitioners try to present, the sensitivity report was a tool to assist Rosado in redirecting his operations. Rosado ignored this tool and did not implement any changes of his own. WPR remained in critical condition, without signs of improvement.

(d) *The Action Plan*: Unlike petitioners' characterization of Morrow giving him a "second chance" to redirect WPR with an action plan but not offering him enough time to prepare same, the record reflects Morrow's impatience

and growing frustration with Rosado. Pet. App. 9, 27. The record also reflects Morrow's no-nonsense meeting with Rosado was, not a second chance but, a final warning that either Rosado shape up the operations or ship out. *Id.* Morrow's meeting and the request for an action plan hold no collusion. *Id.* WPR's situation was critical. Pet. App. 25-26. Morrow mandated change and direction from his general manager. If Morrow did not see any, he even was considering closing WPR for good. He spoke frankly with Rosado. However, even after Hegel reiterated Morrow's request that Rosado submit the action plan, he simply did not render the required action plan or any other plan, for that matter. Opp. App. 9.

Viewed in its most favorable light, these four points fail to counter WPR's legitimate business reasons or create a trial-worthy issue of pretext under the ADEA. Petitioners have not presented any other evidence as pretext. Therefore, they fail to demonstrate that WPR fabricated economic losses under Rosado's direction in order to conceal their discriminatory motives, much less have they proved any inconsistencies regarding WPR's performance-related reasons for termination.

Evidently, WPR suffered a decrease from $33 million to $16 million in revenues. Also, WPR was not collecting on accounts receivables; which reached a whopping $4 million. Rosado, as General Manager, knew WPR's operations had reached a critical level and, despite management's instructions, did not redirect the operations to the

point where WPR on the brink of extinction.[6] Opp. App. 4-9.

As respondents meander through the winding road of their pretext claim, petitioners simply fall short of the finish line for they cannot withstand any basic threshold for pretext. The end of the road leads us to the beginning, WPR's consistent and uncontested reasons for reaching its termination decision. These reasons hold no falsity, collusion or contradiction.

In fact, the only contradiction found is Rosado's disagreement with WPR's higher management, i.e. Morrow and Hegel, on its need to implement change and propose viable alternatives in WPR. However, Rosado's disagreement does not suffice to prove pretext. *See*, *Shorett* v. *Rite Aid of Maine, Inc.*, 155 F.3d 8, 15 (1st Cir. 1998) (On the question whether an explanation of poor job performance is pretext, a plaintiff's mere personal disagreement with the employer's opinions about her job performance is not sufficiently probative to avoid summary judgment.); *Holifield* v. *Reno*, 115 F.3d 1555, 1565 (11th Cir. 1997); *Ost* v. *West Suburban Travelers Limousine, Inc.*, 99 F.3d 435, 441 (7th Cir. 1996); *Benham* v. *Lenox Savings Bank*, 118 F. Supp. 2d 132 (D. Mass. 2000) (Same).

Rhetoric, speculation and hyperbole aside, petitioners simply did not, for they could not, prove that WPR's legitimate, nondiscriminatory reason for its discharge

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[6] Contrary to Rosado's unsupported statement that he wrote to Hegel on "several" occasions (Pet. 6), the record only provides one letter in February where Rosado merely offers explanations and justifications for one of the issues encountered at WPR. Opp. App. 4.

decision was pretextual. Respondents' reasons were not fabricated, inconsistent, contradictory or unfounded. These reasons find support in the record; in WPR's audited financial statements; in the reason Morrow and Hegel looked Griffey's first ticket to Puerto Rico in 2001 to prepare a sensitivity report; in the fact that, despite the tool provided in the sensitivity report, no changes were implemented to redirect WPR for two (2) years, and, that Rosado did not even prepare the required action plan for WPR. With this performance backdrop in mind, petitioners failed to present sufficient evidence to contest WPR's legitimate, non-discriminatory reasons for Rosado's termination. Pet. App. 8-9, 26-28. As the Court of Appeals correctly analyzed, even taking all of petitioners' evidence as true, this evidence does not prove pretext. *Id. Reeves'* spirit is evident throughout the decision.

WPR, Morrow and Hegel, did not mask their increasing dissatisfaction with Rosado's managerial performance; WPR did not invent their concern that WPR suffered a lack of effective leadership. As the District Court stated: "The record is so colored with evidence of WPR's troubled financial health, and with WII President Morrow's growing impatience with WPR's lackluster performance, that Defendants' rebuttal hardly requires further discussion." *Docket Nos. 1, 16, 16, 17, 27, 28.* Pet. App. 25.

In sum, the Court of Appeals correctly applied the pretext standard of *Reeves* as it would in any discrimination case, taking into account all the circumstantial evidence petitioner presented. It determined that, based on the record in this case, petitioner "failed to present evidence necessary to show that Wackenhut defendants' given reasons for the termination were pretextual." Pet. App. 8. Thus, petitioners' assertion, in addressing pretext,

is incorrect. The petitioners simply did not satisfy their burden of production because they did not come forward with any evidence to suggest that the reason articulated for his termination was pretextual. The Court took into account petitioners' evidence, but ultimately found no showing of age discrimination. Since no trier of fact could find age discrimination on this record, and since the court undoubtedly applied the correct legal standards, certiorari should be denied.

II. THE COURT OF APPEALS CORRECTLY DETERMINED THAT ROSADO DID NOT FULFILL ITS BURDEN OF PRESENTING A *PRIMA FACIE* CASE OF DISABILITY DISCRIMINATION UNDER THE ADA.

Although the question petitioners present before the Court addresses pretext in the ADEA claim. (*See*, Section I of petitioners' brief), petitioners commingle their analysis with their ADA claim throughout the brief. Pet. 3, 16-17. In the interest of clarity, respondents elucidate that both the Court of Appeals and the District Court correctly determined that petitioners did not meet the *prima facie* burden under the ADA. As a result, petitioners need go no further on pretex.

As petitioners have not formulated an error as to the Court of Appeals determination regarding their failure to prove a *prima facie* disability discrimination claim under ADA, any analysis on pretext on this count is superfluous and not brought properly before this Court.

Therefore, any argument or error regarding the court's determination on failure to meet the *prima facie* burden under the ADA is waived. *Rivera Gómez* v. *de*

Castro, 843 F.2d 631, 635 (1st Cir. 1988); *Shakur* v. *Selsky*, 391 F.3d 106 (2nd Cir. 2004); *Cavallo* v. *Star Enter.*, 100 F.3d 1150, 1152, n.2 (4th Cir. 1996); *United States* v. *García*, 242 F.3d 593, 599 n.5 (5th Cir. 2001); *Boyd* v. *Ford Motor Co.*, 948 F.2d 283, 284 (6th Cir. 1991), cert. denied, 503 U.S. 939 (1992); *Wildlife Exp. Corp.* v. *Carol Wright Sales, Inc.*, 18 F.3d 502, 508 n.5 (7th Cir. 1994); *Leer* v. *Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Wilken* v. *United States*, 289 F.3d 684, 689 n.9 (11th Cir. 2002); *Doe* v. *District of Columbia*, 93 F.3d 861, 875 n.14 (D.C. Cir. 1996).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Aurelio Rosado Plaintiff vs Wackenhut Puerto Rico Inc.; Wackenhut International, Inc. Defendant	CIVIL NO. 2003-1737 (JAF) RE: AGE DISCRIMINATION & DISABILITY TRIAL BY JURY

STATEMENT OF UNCONTESTED FACTS

TO THE HONORABLE COURT:

DEFENDANT Wackenhut Puerto Rico Inc. ("WPR") and Wackenhut International, Inc. ("WII"), through the undersigned counsels, and pursuant to Local Rule 311.12, respectfully submit a statement of uncontested facts supporting its motion for summary judgment under Fed.R.Civ.P. 56.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

1. WII is a parent company of the WPR. WPR is a company dedicated to providing security and surveillance services. WII is primarily responsible for the Wackenhut subsidiaries and affiliates outside of the United States. Transcript of Mr. William Jefferson Morrow's deposition, Morrow's deposition, taken on May 7, 2004, Exhibit A, "Morrow's deposition", p. 26, L. 5-23, p. 27.

2. The affiliates and subsidiaries of WII are separate legal entities. WPR is a subsidiary of WII. WPR has its

own Board of Directors and is an independent company from WII. As such, WPR is a separate legal entity, incorporated under the laws of Puerto Rico and has its own Board of Directors. WPR's Board of Directors is solely responsible for handling the human resources issues. Morrow's deposition, p. 33, L. 16-24; p. 39, L. 9-20. Transcript of Mr. Fernando Hegel's deposition, taken on January 23, 2004, attached hereto as Exhibit B; "Hegel's deposition", p. 44, L. 2-21.

3. In WII's corporate structure, the General Manager of each subsidiary and affiliate is fully responsible for the operations of the country they manage. The General Managers have broad decision-making power. The General Managers of Wackenhut's country operations have broad discretion and control over the contracts; clients they pursue; recruiting; and the operations they manage. Corporate headquarters do not recommend specific actions to implement because each country has a different culture, a different environment, legislation varies from country to country. Therefore, the General Manager is the person in charge of running the operations in the specific country. They are expected to act and manage. Hegel's deposition, p. 91, L. 19-22; p. 92-94; p. 99-100, p. 179, L. 4-9. Morrow's deposition, p. 61-62; p. 64, L. 19-24, p. 65, p. 67.

4. Each general manager for each subsidiary has to submit to WII headquarters monthly reports regarding their operations, a balance sheet and a Profit and Loss sheet ("P & L"). Every year, each of the General Managers for Wackenhut's country operations must submit a budget for the upcoming fiscal year and a corporate management plan. Aside from the above, the interaction between the General Manager and the Vice President of Operations of WPR, Mr. Fernando Hegel ("Hegel"), or the President of

WPR, Mr. William Jefferson Morrow ("Morrow"), is basically limited to an annual meeting and the discussion and approval of the budget and action plans. Hegel's deposition, p. 48-50; p. 52-54.

5. Hegel and Mr. Fernando Carrizosa ("Carrizosa"), President of Wackenhut Puerto Rico prior to succeeded by Morrow, evaluated the General Managers under their wing. These evaluations are based on performance, results, and customer satisfaction. They analyze various factors, such as: budgeted versus actual revenues, budgeted versus actual profits, and accounts receivables. Hegel's deposition, p. 77-80.

6. Aurelio Rosado ("Rosado") began working as General Manager for WPR on January 31, 1989. He ceased working for the company on July 12, 2002, when he was terminated. Transcript of Aurelio Rosado's deposition, taken on May 12, 2004, attached hereto as Exhibit C, "Rosado's deposition", p. 16, L 22-24, p.17-19; Verified Complaint, par. 7.

7. As General Manager for WPR, Rosado would decide the appropriate bid proposal based on the client, Rosado's knowledge of the business in Puerto Rico and its competitors. Under Rosado's command as General Manager in the early to mid-nineties, Wackenhut started to grow by obtaining government contracts won in the bidding process. WPR had contracts with several government agencies, pharmaceuticals, the University of the Sacred Heart, Centro Sor Isolina Ferré, and Puerto Rican Cement. Between 1989-1998, grew and improved its performance. Rosado received good evaluations during this time. Rosado's deposition, p.20-25; Hegel's deposition, p. 84-90.

8. Beginning in late 1998 through 2001, WPR lost all government contracts and more than half of its revenues. WPR started experiencing problems and concern grew regarding various aspects of the WPR operations. WPR's President at the time, Carrizosa, requested Rosado address the following areas: *collecting on accounts receivables*; reaching their financial objectives; total reliance on government contracting as the main client; the overtime and overhead expenses; and the need to improve and diversify the client roster. Rosado's deposition, p. 25, L. 3-24, p. 47, L. 1-21, p. 36 L. 15-24; p. 37, L.1; Hegel's deposition, p. 84-91, L. 1; Copy of letter from Fernando Carrizosa, the President of WPR, to Rosado, dated December 28, 1998, attached hereto as Exhibit D, documents which were provided in Exhibit 1 of Defendants' Answer to Request for Production of Documents.

9. Carrizosa, the President of WPR, and/or Hegel, Vice President of WPR, would meet with Rosado and discuss sales once or twice a year during Rosado's rate and performance bonus. Rosado's deposition p. 57, L. 6-24; p. 58-61

10. During 1999-2001, Carrizosa and Hegel discussed with Rosado on various occasions the impact of the loss of government contracts and the need to redirect sales. Rosado knew WPR was undergoing a critical economic situation. Hegel and Carrizosa requested Rosado focus on mitigating the loss of the government contracts, increase and redirect sales efforts and implement change to improve the situation. Both Carrizosa and Hegel informed Rosado that the fiscal situation had to change and he needed to address these critical issues immediately. Rosado responded to these concerns and requests with two letters that merely offered explanations regarding some of

the aspects in WPR, nothing else. Rosado's deposition, p. 56, L. 8-24; p. 57, L. 1-3; Hegel's deposition, p. 91, L. 19-22; p. 92-94; p. 99-100, p. 179, L. 4-9. See, also, Copy of the two letters Rosado sent to Hegel in response to the company's concerns on February 10, 2001 and February 11, 2001, attached hereto as Exhibit E and copy of the balance sheets for 1999-2001, attached hereto as Exhibit F; documents which were provided in Exhibit 1 of Defendants' Answer to Request for Production of Documents.

11. In addition to responding to WPR's concerns with the two February 2001 letters, Rosado: (1) encouraged his sales person, Luis Giraldo, to continue selling, and (2) reduced his data entry personnel in order to ease the impact of the government contract losses. Aside from these two steps, Rosado did not implement any other changes in the Puerto Rico operations, He did not believe any other preventive measure could be taken. Rosado's deposition, p. 47, L. 22-24; p.48, L. 1-9, p. 50-51.

12. By June 2001, more than three years had passed, and WPR's fiscal situation reached a critical point. The revenues had decreased from $33 million to $16 million. WII sent John Griffey ("Griffey"), a Special Project Manager in Field Support Operations for WII, who provided managerial and operational support to various general managers in different countries, to Puerto Rico. The purpose of his visit was to review WPR and provide a sensitivity report. During July 2001, Griffey visited Puerto Rico, analyzed the situation in WPR, and drafted a sensitivity report with various recommendations. Hegel's deposition, p. 106-112; p. 117-119. Rosado's deposition, p. 52, L. 17-24; p. 53 L. 1-15; p. 54, L. 4-24; p. 55-56. Transcript of John Griffey's deposition, taken on January 23,

2004, Exhibit G, "Griffey's deposition", p. 58, L.5-19, p. 65-66.

13. The sensitivity report addressed critical areas in WPR requiring immediate improvement. WPR operations had radically decreased; how the loss of two major accounts would impact WPR, the operational redirection that WPR had to undergo; the total failure of collections amassing a whopping $4 million in account receivables; excessive operational costs; the strategy to increase sales. Griffey and Rosado shared ideas during this process and the preparation of the report. Griffey shared his recommendations with Rosado. Rosado disagreed with many aspects included in Griffey's recommendations, Griffey's deposition, p. 66-69, L. 1-21, p. 93, L. 7-24, p. 94, L. 1-12, p. 102-109, p. 116, L. 10-25, p. 117-119. See copy of electronic transmission from Griffey to Carrizosa, dated July 3, 2001, reporting the meeting with Rosado, attached hereto as Exhibit H. See also, copy of the sensitivity report Griffey prepared, dated July 30, 2001, attached hereto as Exhibit I, these documents were also submitted in Exhibit 3 of Defendants' Answer to Request for Production of Documents.

14. Hegel met with Rosado to discuss the P & L Reports, the sensitivity analysis, and to discuss actions to implement to recover from the impact of the loss. Rosado informed that he was concerned with the pricing in Puerto Rico. He believed WPR could not grow because its rates were too high. However, Rosado as General Manager, had discretion as to the rates he implemented the expansion strategy or market penetration and was responsible for redirecting the revenue and market loss. Hagel's deposition, p. 114-119.

15. When Morrow became President of WII in 2001, as well as president of the WPR Board of Directors, WII headquarters started to focus on its subsidiaries and affiliates. Morrow evaluated the WPR operations. At that time, WPR had lost half of its business and collections on accounts receivable had reached a $4 million high. Upon review, he understood that Rosado as General Manager needed to address immediately the impact of the losses; the accounts receivable and collections problem; as well as redirecting sales. Morrow's deposition, p. 45-54.

16. In January 2002, after WPR had lost 75% of its revenues, Hegel and Morrow met with Rosado in Puerto Rico to discuss the WPR situation. They requested Rosado submit a comprehensive action plan by February 2002. This action plan was to identify objectives to improve sales, reduce overhead, collect accounts receivable, and gear the company towards profitability. During the meeting between Hegel, Morrow and Rosado, Morrow informed Rosado that the situation in Puerto Rico had to change and that if it did not, he would have to close WPR. Hegel's deposition, p. 121, L. 1-22; p. 122, L. 1-14. Rosado's deposition, p. 63, L.5-20; p. 64, L.4-24; p. 65-69, p. 107, L. 3-15. Morrow's deposition, p. 67-75.

17. Soon thereafter, in early February 2002, Rosado suffered a cardiac arrest. Rosado was hospitalized for around 25 days and was ordered to rest and recuperate. Around 50 days after the heart attack, Rosado returned to work. Rosado's deposition, p. 70, L. 9-14; L. 23-24; p. 71, L. 1-2, p. 72, L. 2-14. Hegel's deposition p. 124, L.1-6.

18. Rosado did not submit the action plan in February 2002. In the meantime, WPR was still undergoing a critical situation. Since Rosado was unable to submit the

action plan to address the troubled economic situation, Hegel and Morrow opted to send Griffey, who was familiar with the Puerto Rico operations as a result of his visit in 2001, to Puerto Rico, to prepare a report and recommendations for the action plan. Also, Griffey was brought to Puerto Rico to hold the fort and offer support to sustain WPR during Rosado's absence. During Rosado's recovery, Griffey was named Assistant General Manager to fill the leadership void of Rosado's absence; provide direction to the WPR; providing leadership to the staff sustaining the operations and ensuring customers that WPR was still taking care of the business. Hegel's deposition, p. 126, L. 11-20, p. 127-129, p. 130, L.15-20, p. 131, L. 1-17, p. 133, L. 3-17, p. 134, L. 8-17; p. 162, L. 7-21; p. 163-164. Rosado's deposition, p. 72, L. 15-24; p. 73-74; p. 82, L. 19.24; p. 83, L. 1. Morrow's deposition, p. 75, L. 14-24, p. 76, p. 78, p. 81, L. 21-24, p. 82, L. 1, p. 89, L. 11-19.

19. During Rosado's absence, Griffey prepared a situation report of the WPR operations and the projects implemented to alleviate the critical situation in WPR. The situation report provided a detailed account of the following issues, among others: client contract management; collections; a detailed reorganization of the Puerto Rico operations; bid development; and inventory control. Griffey provided suggestions for each area. See copy of the Situation Report Griffey prepared in March 28, 2001, attached hereto as Exhibit J, document which was provided in Exhibit 3 and 7 of Defendants' Answer to Request for Production of Documents.

20. Rosado returned to his position of General Manager in April 2002, using the same office, supervising the same subordinates, and handling the same duties and responsibilities as before, Rosado's deposition, p. 79, L. 12-19;

p. 85, L. 4-9; L. 16-24; p. 86, L. 1-8; Hegel's deposition, p. 135, L. 12-20.

21. Since Rosado did not indicate otherwise once he recovered and returned in April 2002, WPR expected Rosado to perform the duties of his position as General Manager and submit the action plan. As a result, Hegel requested Rosado's action plan to address the issues that had been hindering WPR's performance. Hegel's deposition, p.135, L. 12-19. See also, copy or electronic mail from Hegel to Rosado, dated April 9, 2002, attached hereto as Exhibit K, documents contained in Exhibit 1 of Defendants' Answer to Request for Production of Documents.

22. Rosado and Griffey discussed Griffey's report and suggestions. Rosado disagreed with Griffey's suggestions and they discussed these differences. Rosado believed some of the suggestions Griffey was making could not be implemented in Puerto Rico. Hegel, in turn, requested Rosado provide comments on Griffey's suggestions. Rosado did not provide those comments or make additional recommendations. Rosado never prepared a satisfactory action plan. Rosado simply directed his comptroller to provide a limited report. Rosado's deposition, p. 73, L. 2-24; p.74-79, L. 1-11.

23. Rosado's performance as General Manager had been declining since 1998, reaching critical levels in 1999, 2000, 2001 and 2002. Rosado had not responded to WPR's request to redirect the sales losses and revenues. As General Manager, Rosado simply was not rendering any results for WPR, not even the action plan that was requested of him. WPR had lost more than 75% of the business and Rosado had not implemented anything as General Manager to improve or change the situation.

Hegel and Morrow believed Rosado took a laissez-faire attitude and did absolutely nothing to change or ameliorate the situation, despite their multiple requests to do so. In light of the above, WPR's President, Morrow, in his capacity as President of the WPR Board of Directors, decided to terminate Rosado in July 2002. Hegel's deposition, p. 137, L. 6-21; p. 138 L. 141; p. 143-144; p. 145. Morrow's deposition, p. 79, L. 14-24, p. 80-83, p. 86-88, p. 90, L. 20-24, p. 91-92. Rosado's deposition, p. 88, L. 11-24; p. 90, L. 1-13.

24. The decision to terminate Rosado was based on his performance, his lack of initiative, his failure to provide a comprehensive action plan, and to show any signs of improving the critical situation in WPR. Hegel's deposition, p. 143-145, L. 1-14.

25. Once Rosado's termination was decided, Hegel and Morrow discussed who was going to become General Manager for WPR, Hegel recommended Griffey because of his experience within Wackenhut, his operations experience and he [sic] familiarity with the Puerto Rico. Hegel's deposition, p. 149-151.

26. Rosado believes that he was terminated from his employment with WPR primarily because of his age, and because he suffered a second heart attack. Further, Rosado believes he was discriminated against because Griffey partook in some of Rosado's functions as General Manager during his absence. Rosado's deposition, p. 92, L. 5-13, p. 95, L. 17-24; p. 96.

27. At the time of his termination, Rosado's salary was $152,000.00; a $40,000.00 performance bonus; and a $10,000.00 bonus for proper handling of the credit line. Rosado's deposition, p. 98, L. 5-21.

28. Griffey was not involved, nor did he participate in the decision to terminate Rosado. Hegel's deposition, p. 142, L. 1-12; Griffey's deposition, p. 134, L. 5-15.

29. Rosado admits no one in WPR or WII made any comments or acted in any way to make him believe that age and/or an alleged disability factored into the company's decision to terminate him. Rosado's deposition, p. 93, L. 1-8; p. 94, L. 18-24; p. 95, L. 1-3.

30. Rosado only identifies one comment from the President of Wackenhut El Salvador, Miguel Angel Escobar, who called Rosado at work and asked him, "Aurelio why don't you retire?" No one else participated in the conversation. Wackenhut El Salvador is an entirely different subsidiary of WII and is completely unrelated to the WPR operations. Rosado admits that no one in WPR or WII told him that his heart condition factored into the decision to terminate him. Rosado's deposition, p. 93, L. 3-24, p. 94-95.

31. Griffey was appointed General Manager for WPR on July 12, 2002. He turned forty (40) on that same day. See Griffey's deposition, p. 133, L. 3-6; Verified complaint, Statement of Claim, Page 7.

32. Hegel did not know Griffey's age at the time Griffey was appointed General Manager. Hegel's deposition, p.152, L. 4-9.

The above are the uncontested facts submitted in support of the motion for summary judgment that defendants have filed this same day.

In San Juan, Puerto Rico, this 28th day of June 2004.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Plaintiff's counsels, Juan M. Frontera Suau and Celina Romany.

Respectfully submitted by,
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[LOGO]

PTR SITREP

TO: Fernando Hegel, VP Latin America — DATE: 03/28/02

CC: Jeff Morrow, Sr. VP, WII

FROM: John Griffey, Acting GM, WPTR — DIV/AREA: WII

SUBJECT: Situation Report

Hello Fernando,

Based on our conversations I wish to give a written account of the progress being made thus far with Wackenhut Puerto Rico Inc. the following is a synopsis of the projects underway at this point in time.

1. **Support Visit from Don Perkarsky and Allison Texiera:** The support visit went very well. On Friday, we had a debriefing and basically identified some priorities that must be established to control some of the problems we are encountering on a regular basis. Of the major priorities is Collections and Validation and Accuracy of information input on the CCM (Client Contract Management) System. Additionally there are some other operational issues we addressed which will be outlined in this report.

2. **Collections:** After the support visit Isabel Cotta, Carlos Reyes and I met to discuss a plan to initiate for collections. Isabel created a list identifying all customers with significant outstanding balances of over 120 and 365 days on the aging report. From the list are the following clients which are considered the highest priority for us:

Client Name	Aging 120-356 days
ADM. REHAVILITACION VOC	$800,645.41
AUT EDIFICIOS PUB	$70,882.64
CARIBE GE	$122,287.75
COMISION ESTATAL DE ELECT	$215,685.62
DEPARTAMENTO FAMILIA	$361,897.79
PFIZER GLOBAL MNFG	$464,817.75
SCHERING PLOUGH	$362,853.81
Total	**$2,597,726.82**

I have a meeting with Pfizer on Tuesday at 10:00 to discuss their outstanding balance. Schering and Caribe are on the same list and we are arranging meeting with them also. I can't guarantee if we will meet before the Easter break. Regardless, this is am [sic] item on my priority list. Once I contact the key p[ersonnel [sic] of each of these organizations, I will not let go until the [sic] pay up.

3 **Reorganization:** Please see the following Powerpoint Presentation of the changes we propose. Of course, no changes will be made until I receive approval from you. In the presentation you will note a consolidation of regions. This will increase coverage but decrease personnel. To offset the effects of increase areas, we have identified sites with several posts that will have Sr. guards delegated to accomplish quasi-supervisory functions. This will free the shift supervisors to cover a larger area during the same amount of time.

- We can be ready to implement the plan during the first week of April

On page 5 of the Powerpoint Presentation, you will note highlighted lines (yellow). These highlights mark

the moves and changes in the overhead proposed. On the last slide, you will note a table of changes the Left Side represents our current organization now. The Right Side repesents the proposed changes. On the far left side you will note a olumn of numbers. These numbers are the record numbers and will be used to identify the changes which are explained below.

1. General Manager, Aurelio Rosado – No Change
2. Secretary. The General Manager Secretary will be eliminated. This position will be filled with the Business Development Secretary who will accomplish both functions.
3. BD Rep, No Change
4. DB Proposal Writer – Moved to position #2.
5. HR Manager – No Change
6. Trainer – Moved to operations and will continue to train and implement and perform Quality Control functions.
7. HR Secretary – moved to CCO position
8. HR Investigator – Will conduct investigations and interviews
9. HR data entry clerk – No Change
10. HR Clerk – No Change
11. HR Warehouse Clerk – Moved to Accounting position #26 and will also perform Fleet Management.
12. HR Switchboard Operator – will be replaced with automated switchboard/voice mail system ($5,500) see notes on previous pages.
13. HR benefits specialist – No Change

14. Electronics Manager – No Change
15. Electronics Secretary will also provide functions as General Secretary
16. Electronics Technician – No Change
17. Electronics Technician – No Change
18. Electronics Technician – No Change
19. General Accountant – No Change
20. Accounts payable – No Change
21. Collections Supervisor – No Change
22. Collections Clerk – No Change
23. Accounting Assurance – No Change
24. Accounting Assurance Assistance – Replaced Area manager and will continue to do the CCM functions as well as the Area Manager functions.
25. Warehouse/Inventory/Fleet management/Messenger – Moved here from Position # 11
26. Operations Manager – No Change
27. Command Center – Move two of the CCOs' [sic] to billable jobs and replace them with positions # 7 and #12.
28. Mechanic – Eliminate position. This function will be performed by Position #25.
29. Q/C – Trainer Moved from position #6
30. Area Manager Caguas/Metro – Change to Area Manager North East Consolidate regions.
31. Area Manager North East (2) was called Area Manager Bayamon/Arecibo. Will work with Area

manager North East #1 but during different times of the day to provide 16-20 hours of on-site area management.

32. Field Supervisor Caguas/Metro – consolidated region will now be required to cover a larger area. To assure this is possible, we have identified all clients with multiple posts in one site. These key sites have a Sr. guard assigned to them. The Sr. guard will perform the functions of the area supervisor. The area supervisor will not have to visit this post every shift, which will enable the shift supervisors to cover a larger area as noted in the consolidation.

33. CPO Cag/Metro – Changed to Shift Supervisor for North East Area

34. CPO Cag/Metro – Changed to Shift Supervisor for North East Area

35. CPO Cag/Metro – Changed to Shift Supervisor for North East Area

36. Area Manager Bay/Are shifted to position #32

37. Field Supv (Bay/Are) eliminated due to consolidation – moved to billable job with overhead cost to compensate for difference in billable rate of that job. Undetermined which job to move to.

38. Field Supv (Bay/Are) – Eliminate position.

39. Field Supv (Bay/Are) eliminated due to consolidation – moved to billable job with overhead cost to compensate for difference in billable rate of that job. Undetermined which job to move to.

40. Area Manager Pon/May – No Change

41. Captain Pon/May – No Change

42. Supervisor Pon/May – No Change
43. Supervisor Pon/May – No change
44. Supervisor Pon/May – No change
45. Supervisor Pon/May – No change
46. Supervisor Pon/May – No change
47. Supervisor Pon/May – No change

- The reduction in personnel from overhead is based on two re-organizational methods. One being shifts from overhead positions to Billable Jobs. The other, position elimination as outlined above.

  The results are as follows:

	Salaries	# Pers
Total Current	$881,030	47
Total Proposed	$787,057	39
Total OH Reduction in Salaries and Wages	$93,973	8
Total OH Reduction in FICA, FUI, SUI VAC, Sick Leave	$15,994	
Total OH Reduction	$109,967	
Total Reduction in $ (%)	10.67%	
Total Reduction Personnel (%)	17.02%	

- Once we have established some stability with the reorganization, we will be able to evaluate and present a Phase II to decrease more overhead payroll.

- Finally, if we are to compare Wackenhut Puerto Rico Inc. to a NAO branch office we have to consider that Wackenhut Puerto Rico Inc requires the following additional personnel to function properly

  - General Accountant (controlling the finances of two offices) — 1 person
  - Accounts Payable/Bookkeeper — 1 person
  - CCO (Communications Center — 4 people
  - Alarms division — 5 people

  The above account adds 11 additional personnel to the operation. If we were to subtract these 11 people from the reorganization plan this would bring us to 28 people in our office and four are less than full time employees. So if we compare Wackenhut Puerto Rico with an NOA branch, considering the above notes, we are doing just as well for the amount of hours sold on a weekly basis (18 – 20K). Note that this is a comparison of personnel count only. The payroll effects are a different story which is most important –

4. **Fleet Management Program:** As you know, prior to the reduction in hours, we had 46 vehicles.

   16 were sold

   2 were totaled in accidents.

   There are 2 in the workshop

   1 is assigned to Aurelio.

   3 motorcycles assigned to clients.

   1 vehicle is assigned to Puerto Rico Cement (client).

   4 vehicles assigned to alarms division

8 are assigned to Managers of the company as part of their benefits package (includes maintenance and gasoline)

The remaining 9 are dedicated to operations.

All vehicles have fuel cards assigned to them with no monthy limit I have reviewed the fuel consumption reports and cannot identify any abuse.

5. **Scheduling Program.** As you know we are currently using the Client Contract Management (CCM) for the administration of all our contracts. The system includes a scheduling module which works in cycles of 7 days. You can have only one cycle active at a time. To help in projecting operational activity we are developing a scheduling program that will give the next weeks schedules with personnel assignments. The same scheduling system will also be used for time card control and registering the unscheduled operational activity (absenteeism, vacations, tardy). It will also be the main tool used to count the required personnel needed for the staffing of our Jobs (which we don't have at this moment. Without it we run into unscheduled OT that could have need controlled. We plan to run a test on 25 March for one week to tweek the system and then implement it, fully in April.

6. **Telephone Switchboard Automation:** As part of the reorganization program, we propose to remove the switch board operator and have her replaced with an automated switchboard which also ahs [sic] voice mail capability. In the event there is an emergency the caller can simply dial zero to speak with the Command Center. After meeting with CORTELCO, the telephone system provider for Wackenhut Puerto Rico Inc, I learned that the board required for this service will cost $5,544.00. It includes the following features which are considered STANDARD:

- 100 User Mailboxes
- Mailbox passwords
- Personalized greeting messages (2)
- Pager/Beeper Notification
- Time and date stamp for incoming messages
- Announce Only mailbox
- Group Mailboxes (distribution lists)
- Auto Attendant (Day/Night/Weekend Modes)
- Access Menus
- Directory Lists
- Audiotext
- Set Up Instructions via voice

The Installation is seamless and will take about 4 hours. If the purchase of this board is approved, it will take about 10 days from time of order to installation. I have not found other quotes as CORTELCO, the provider of this quote is the company that provides maintenance for our telephone communication system. The board (Protégé Voice Auto Attendant Voice Mail System was designed for our existing Protégé Telephone system.

7. **Bid development Process and Standardization:** I have reviewed the standard service contract we have here and noted some things that I believe are not good for us. I made some changes and would like Legal to review them. Please see the attached Standard Contract Form Question – If we have a client who asks for additional or emergency services, do we provide at the same billing rate as the standard service, if they give us advanced notice of 24 hours? Please

note changes made and advise of any other concerns. I would really like legal to take a look at it. We will not use it until it is approved by TWC and Local Lawyers.

Additionally we are in the process of making a W-46 type of costing spreadsheet. Once out [sic] model is finished, as Fernando Hegel advised, I will send it to henry Cujo so he can format it into the standard W-46 format.

Once the reorganization program has been approved, I plan to implement the Quality Control Program this will take about a week to implement, behind the scene. It will definitely increase the productivity of our personnel

8. **Part Time Campaign:** We are considering a recruitment campaign for Part Timers. We plan to pay them a base wage less than the Over Time Premium. In our plan we will require that they are already full time employees – from companies ***other than*** security firms and existing clients. If they are full time workers, the Background investigation will be easy to conduct and will expedite and assist the determination process of hiring qualified "part-timers". We plan to run a test with no obligation for the Sunday. The minimum qualifications are – good standing with current employer for at least 3 years. Can work no more than 16 hours a week and no more than 8 hours per shift for Wackenhut. Must pass all required tests and background investigations. We plan to hire a small pool at first of 10, as Part Time at an attractive wage of $6.50 which is still less than the $7.72 overtime wage we pay for our full time employees contracted at minimum wage ($5.15). I had a meeting with HR, Operations and Training today to discuss the pros and cons of this program. I will keep you posted on the progress. Of course we will also have the operational

controls in place to assure these partimers [sic] are assigned only when "unscheduled O.T. hits operations. They will not be able to work more than 8 hours per shift and they will not be able to work more the two shifts per week. our background checks will be base [sic] on their current employment reference. If you see any problems in implementing this program, please let me know as we are preparing for Easter Weekend, which will hit us hard if we don't have these partimers [sic] in place.

9. **Inventory Program:** Currently we do not have an active inventory program for Alarm or supply. It is difficult to determine when and where the uniforms, and electronics equipment are entering and leaving the company. We are in the process of standardizing an inventory program to help control this.

10. **Alarms Division:** We are defining a standard bid and Contract process for the alarms division. I have not been able to conduct a full marketing analysis for alarm monitoring. However, based on the information Luis Zapata (Manager Alarms division) states, TYCO, Ranger American, ALARMEX and USA LINK are the biggest alarm monitoring companies here in Puerto Rico. Safe Home will be entering the market here in Puerto Rico in April. These companies are in price wars and are now offering Free Alarm System and Installation based on a contract of 2 years at 34.95 per month.

Wackenhut Puerto Rico offers a system and installation for $199 with a monitoring subscription contract of $14.95 per month for at least one year.

To become more competitive in the market, we would like to offer the alarm system and installation free, as the competitors and charge a monthly subscription of $31.95 for at lease 24 months. Of course our exposure will be the

investment and installation of the alarm system and the collections.

To control the collections process, Wackenhut Puerto Rico's alarms contract would be signed, contingent upon the customers enrollment of Direct Billing to either their checking account or credit card. This feature would enable automatic payment and would reduce the invoicing problems we are currently facing (billing customers that are inactive, and not billing customers that are active). Additionally, with the new software we are proposing for 2003,

- Current Monitoring System
- Central Station "Linear"
- Capacity of 999 lines
- Analog
- Multi User module has capacity of only 10. We have several clients with more than 10 users
- Zoning capacity has a limit of 10 zones. We have clients with more than 10 zones
- Receives only 10 types of signal formats
- Does not have ADEMCO contact ID (needed for all control panels now being sold for Multi-User customers
- Does not receive addressable Fire equipment
- PC is an old P54C with 32 mg of RAM
- We cannot do a back ups [sic] on it through the ZIP Drive, reason unknown. If we have computer system failure, we will be in trouble.

- Does not support remote access/programming (connect and disconnect service, program customer's alarm panel.
- To print reports, the system monitoring is placed on hold until the report is completed and all alarms are cued until the report is completed.

Problems – the monitoring station:

We have no back up system for the Central Station

It is a model 10 years old and there is no repair service or parts in stock in the event of a system failure.Without a backup system we are extremely vulnerable and are exposed to legal issues in the event the system fails and an alarm is activated and we do not make the appropriate response in accordance with contract.

Solution

Replace the current Central Station with an updated model (SURGUARD SLR/MLR2/MLR2000) $4000. The system is digital, and has the capability to use contact ID which enables the support of unlimited users and unlimited zones. It also reads all signal formats.

Use the current Central Station as a preliminary back up until we are able to purchase another SURGUARD for $4000 (6-8 months)

The new Central Station will require a new computer which will cost another $1000

Installation and training will cost another $3,500-$4,000

Total cost for new system for 2002

Central Station	$4,000
New PC	$1,000
Conversion	$500
Total for 2002	$5,500

In 2003 we will want to purchase:

Back Up Central Station	$4,000
Windows Based Software	$4,000
Training/Support	$2,000
Total for 2003	$10,000
Total for system 2002-2003	**$15,500**

During 2001 revenues from Alarms Division which includes monitoring, installations and maintenance (collected) was $240,000. To be conservative, I believe we will continue the same level of collected revenue for 2002 and 2003. At this point in time, I have not been able to accurately calculate the costs of running the alarm division due to the lack of inventory information.

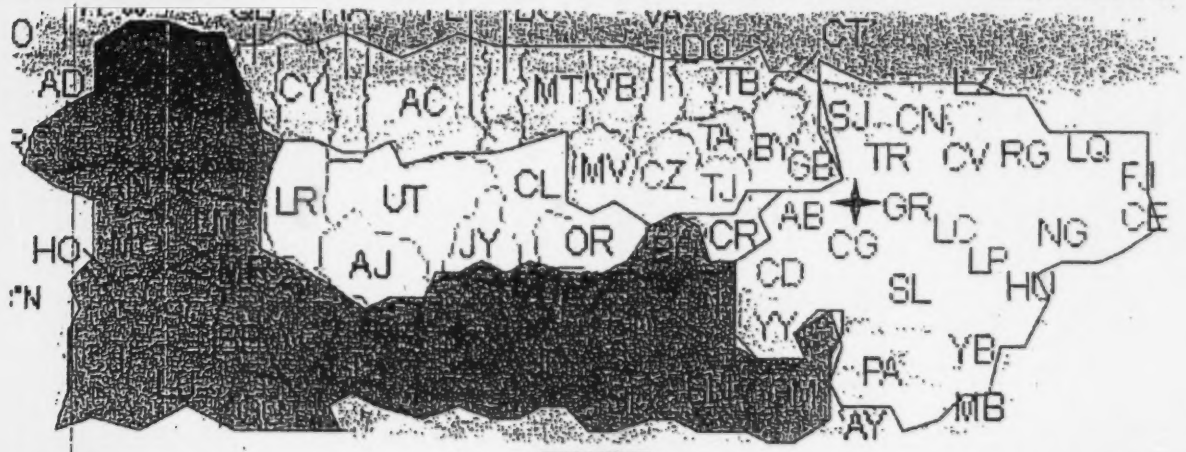
	Current (March 1, 2002)					Proposed (April 1, 2002)				
	Title/ Position	Name	Annual Salary	No. Pers.	% of Total $	Title/ Position	Name	Annual Salary	No. Pers.	% of Total
					General Manager					
1	General Manager	Aurelio Rosado	$150,483	1	17.08%	General Manager	Aurelo Rosado	$150,483	1	19.12%
2	Secretary	Mary Ann Bloom	$16,640	1	1.89%	Secretary/ Proposal Writer	Astrid Massa	$16,640	1	2.11%
	Subtotal		$167,103	2	18.97%	Subtotal		$167,103	2	21.23%
					Business Development					
3	BD Rep	Luis Geraldo	$24,000	1	2.72%	BD Rep	Luis Geraldo	$24,000	1	3.05%
4	BD Proposal Writer	Astrid Massa	$16,640	1	1.89%	Position Split – Moved to position # 2				
	Subtotal		$40,640	2	4.81%	Subtotal		$24,000	1	3.05%
					Human Resources					
5	HR Manager	Victor Carmona	$33,000	1	3.75%	HR Manager	Victor Carmona	$33,000	1	3.75%
6	Trainer	Jorge Calderon	$27,117	1	3.08%	Moved to #28 O/C-Training				
7	HR Secretary	Ycando Montes	$14,498	1	1.05%	Position Change to COO #26				
8	HR Investigations	Luz Carrillo	$11,762	1	1.34%	HR Investigations/ Interviewer	Luz Carrillo	$11,762	1	1.34%
9	HR Data Entry Clerk	Grisell Melendez	$13,208	1	1.50%	HR Asst Interview/ Data Entry Clerk	Grisell Melendez	$13,208	1	1.50%
10	HR Clerk	Brunildo Cruz	$12,522	1	1.42%	HR Clerk	Brunildo Cruz	$12,522	1	1.42%
11	HR Warehouse Clerk	Pedro Medina	$11,960	1	1.38%	Shift to Accounting Position #				
12	HR Switchboard Operator	Lillbeth Diaz	$11,440	1	1.30%	Position Change to COO #26				
13	HR Benefits Specialist	Ademina Roman	$20,405	1	2.32%	HR Benefits Specialist	Ademina Roman	$20,405	1	2.32%
	Subtotal		$155,912	9	17.70%	Subtotal		$90,897	5	11.55%
					Electronics					
14	Electronics Manager	Luis Zapata	$50,358	1	5.72%	Electronics Manager	Luis Zapata	$50,358	1	5.72%
15	Electronics Secretary	Leida Esteva	$14,560	1	1.65%	Electronics/ General Secretary	Leida Esteva	$14,560	1	1.65%
16	Electronics Tech	Reinaldo Claudio	$15,080	1	1.71%	Electronics Tech	Reinaldo Claudio	$15,080	1	1.71%
17	Electronics Tech	Jose Guinones	$11,440	1	1.30%	Electronics Tech	Jose Guinones	$11,440	1	1.30%
18	Electronics Tech	TBA	$10,920	1	1.24%	Electronics Tech	TBA	$10,920	1	1.24%
	Subtotal		$102,358	5	11.62%	Subtotal		$102,358	5	13.01%

				Accounting						
19	General Accountant	Carlos Reyes	$24,960	1	2.83%	General Accountant	Carlos Reyes	$24,960	1	2.83%
20	Accountants Payable	Jose Soijo	$20,904	1	2.37%	Accountants Payable	Jose Soijo	$20,904	1	2.37%
21	Collections Supv	Isabel Cotto	$19,760	1	2.24%	Collections Supv	Isabel Cotto	$19,760	1	2.24%
22	Collections Clerk	Maria Medrano	$15,600	1	1.77%	Collections Clerk	Maria Medrano	$15,600	1	1.77%
23	Accounting Assurance	Joel Mangual	$17,659	1	2.00%	Accounting Assurance	Accounting Assurance	$17,659	1	2.00%
24	Accounting Assurance Asst.	Amaldo Garcia	$13,520	1	1.53%	Accounting Assurance Asst.	Eliminate Position			
25						Warehours/ Inventory/ Messenger	Pedro Medina	$11,960	1	1.38%
	Subtotal		$112,403	6	12.78%	Subtotal		$110,843	6	14.08%
				Operations						
26	Operations Manager	Victor Monzon	$30,576	1	3.47%	National Ops Manager		$30,576	1	3.47%
							2 CCOs transferred to billable jobs. They will be replaced with positions # and #			
27	Command Center		$58,120	4	6.60%	Command Center		$80,000	4	6.81%
28	Mechanic		$13,915	1	1.58%	Mechanic	Position Eliminated			
29						O/C trainer	Jorge Calderon	$27,117	1	3.08%
30	Area Manager Cag/Metro	Hector Rodriguez	$19,000	1	2.16%	Area Manager North East 1	Amaldo Garcia	$15,000	1	1.70%
31						Area Manager North East 2	Pedro Garcia	$19,000	1	2.16%
32	Field Supv Cag/Metro	Pedro Rodriguez	$13,000	1	1.48%	Field Supv North East 1	Pedro Rodriguez	$13,000	1	1.48%
33	CPO Cag/Metro	Antonio Crespo	$8,240	1	0.71%	Field Supv North East 2	Antonio Crespo	$12,480	1	1.42%
34	CPO Cag/Metro	Pedro Ithier	$12,480	1	1.42%	Field Supv North East 3	Pedro Ithier	$12,480	1	1.42%
35	CPO Cag/Metro	Miguel de Leon	$12,480	1	1.42%	Field Supv North East 4	Miguel de Leon	$12,480	1	1.42%
36	Area Manager Bay/Are	Ramon Garcia	$19,000	1	2.16%	Area Manager Bay/Are	Shifted to #32			
37	Field Supv (Bay/Are)	Horacio Pocimiro	$13,000	1	1.48%	Field Supv (Bay/Are)	Eliminate Position	$2,080		
38	Field Supv (Bay/Are)	Antonio Crespo	$8,240	1	0.71%	Field Supv (Bay/Are)	Eliminate Position			
39	Field Supv (Bay/Are)	Pedro Maysonet	$13,520	1	1.53%	Field Supv (Bay/Are)	Eliminate Position	$2,600		
40	Area Manager Pon/May	Efmin Aisina	$23,587	1	2.68%	Area Manager Pon/May	Efmin Aisina	$23,587	1	2.68%
41	Captain (Pon/May)	Luis Malave	$12,480	1	1.42%	Captain (Pon/May)	Luis Malave	$12,480	1	1.42%
42	Supervisor (Pon/May)	Santiago Reyes	$12,480	1	1.42%	Supervisor (Pon/May)	Santiago Reyes	$12,480	1	1.42%
43	Field Supv (Pon/May)	Jusino Vargas	$6,000	1	0.68%	Field Supv (Pon/May)	Jusino Vargas	$6,000	1	0.68%
44	Field Supv (Pon/May)	Mercado Rodriguez	$9,152	1	1.04%	Field Supv (Pon/May)	Mercado Rodriguez	$9,152	1	1.04%
45	Field Supv (Pon/May)	Perez Supelveda	$9,152	1	1.04%	Field Supv (Pon/May)	Perez Supelveda	$9,152	1	1.04%
46	Field Supv (Pon/May)	Jose Rodriguez	$9,152	1	1.04%	Field Supv (Pon/May)	Jose Rodriguez	$9,152	1	1.04%
47	Field Supv (May)	Ramon Ruiz	$3,000	1	0.34%	Field Supv (May)	Ramon Ruiz	$3,000	1	0.34%
	Subtotal		**$302,574**	**23**	**34.34%**	**Subtotal**		**$291,815**	**20**	**37.09%**
	Total Wackenhut PTR		**$881,038**	**47**	**100.00%**	**Total Wackenhut PTR**		**$787,057**	**38**	**100.00%**

Total Current	$881.030	47
Total Proposed	$787,057	39
Total OH Reduction in Salaries and Wages	$93,973	8
Total OH Reduction in FICA FUI SUI VAC Sick Leave	$15,994	
Total OH Reduction	$109,967	
Total Reduction in $ (%)	10.67%	
Total Reduction Personell (%)	17.02%	

App. 28

WACKENHUT PUERTO RICO- CURRENT REGIONS



PONCE/MAYAGUEZ

PONCE		
Weekly Hours	3930	
Unshceduled OT	58	1.48%
MAYAGUEZ		
Weekly Hours	480	
Unshceduled OT	12	2.50%
Region Total	4410	1.59%
Overhead Staff (wkly)	8	$1,595

BAYAMON/ARECIBO

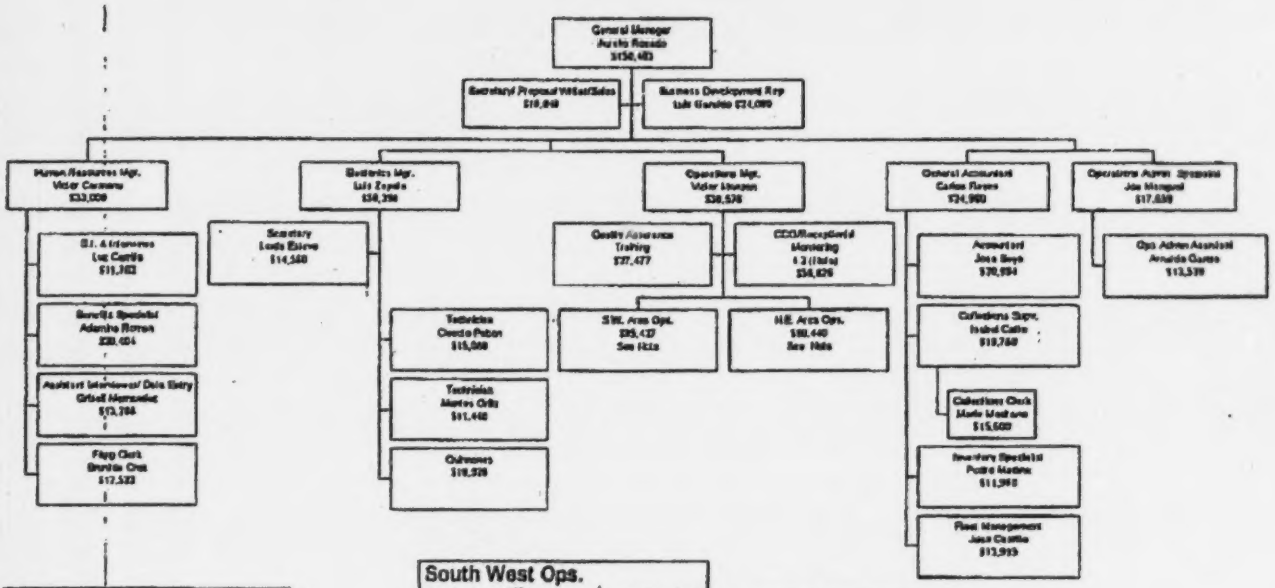
BAYAMON		
Weekly Hours	2040	
Unshceduled OT	77	3.77%
ARECIBO		
Weekly Hours	2904	
Unshceduled OT	101	3.48%
Region Total	4944	3.60%
Overhead Staff (wkly)	4	$1,125

CAGUAS/CAROLINA

San Juan		
Weekly Hours	5922	
Unshceduled OT	483	8.16%
Caguas		
Weekly Hours	2027	
Unshceduled OT	183	9.03%
Region Total	7949	8.38%
Overhead Staff (wkly)	32	$12,406

Puerto Rico Totals		
Weekly Hours	17303	
Unscheduled OT	914	5.28%
Overhead Staff	44	
Weekly OH Wages	$15,127	

WACKENHUT PUERTO RICO
PROPOSED (1 APRIL, 2002)



CCO Post	
Yolanda Montes	$14,496
Lilibeth Diaz	$11,440
Eli de Jesus	$14,040
Nieves	$14,040
Relief Factor	$2,808
Automated Switchboard	
Total CCO	$56,826

South West Ops.	
Area Manager S.W	$23,587
Asst. Area Manager	$19,000
Area Supv. S.W	$12,480
Area Supv. S.W	$12,480
CPO Non-Billable	$2,500
CPO Non-Billable	$2,500
Area Supv. S.W	$11,440
Area Supv. S.W	$11,440
Total S.W.	$95,427

North East Ops	
Area Manager N.E	$19,000
Asst. Area Manager	$15,000
Area Supv. N.E.	$19,000
Area Supv. N.E.	$13,000
Area Supv. N.E.	$13,000
Area Supv. N.E.	$11,440
Total N.E.	$90,440

Total Proposed in Annual Salaries = $787,057
Total Proposed Personnel = 39